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7 Attorneys for Defendant  
8 DISH Network Corporation, et al.

9 IN THE UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

11 ENTROPIC COMMUNICATIONS,  
12 LLC,

13 Plaintiff,

14 v.

15 DISH NETWORK CORPORATION;  
16 DISH NETWORK L.L.C.; DISH  
17 NETWORK SERVICE L.L.C.; AND  
18 DISH NETWORK CALIFORNIA  
SERVICE CORPORATION,

19 Defendants.

Case No. 2:23-cv-1043-JWH-KES

**DEFENDANT DISH NETWORK  
CALIFORNIA SERVICE  
CORPORATION'S EX PARTE  
APPLICATION TO EXTEND TIME  
TO AMEND AND/OR RESPOND TO  
MAXLINEAR'S MOTION TO  
DISMISS COUNTER-CLAIMS**

District Judge: Hon. John W. Holcomb  
Magistrate Judge: Hon. Karen E. Scott

Hearing Date:  
Hearing Time:  
Courtroom:  
Judge:

1 DISH NETWORK CALIFORNIA  
2 SERVICE CORPORATION,

3 Counter-Claimant,

4 v.

5 ENTROPIC COMMUNICATIONS,  
6 LLC; MAXLINEAR, INC.; AND  
7 MAXLINEAR COMMUNICATIONS  
8 LLC,

9 Counter-Defendants.

1 **TO THIS HONORABLE COURT AND TO THE PARTIES AND THEIR**  
2 **COUNSEL OF RECORD: PLEASE TAKE NOTICE THAT**, pursuant to Local  
3 Rule 7-19, Defendant/Counter-Claimant Dish Network California Service  
4 Corporation (“Dish California”) files this *ex parte* application pursuant to Federal  
5 Rule of Civil Procedure 6(c)(1)(C). Dish California seeks to extend the briefing  
6 schedule on the Motion to Dismiss (D.I. 236) filed by Counter-Defendants  
7 MaxLinear, Inc. and MaxLinear Communications LLC (collectively “MaxLinear”).  
8 The purpose of the requested extension is to align the response schedule for  
9 MaxLinear’s Motion to Dismiss with an existing and identical schedule entered by  
10 the Court (D.I. 242) for Entropic Communications, LLC (“Entropic”) to respond to  
11 Dish California’s counterclaims. Because Entropic and MaxLinear have already  
12 raised overlapping challenges to the Counterclaims (Entropic by letter, MaxLinear by  
13 letter and motion), it will be more efficient for the Court to resolve these issues  
14 together, rather than address the issues in piecemeal fashion.

15 Moreover, the requested extension also promotes judicial efficiency by  
16 deferring MaxLinear’s response to the Counterclaims until after a decision by the  
17 Court on already pending motions that may well moot many of MaxLinear’s  
18 challenges to the counterclaims. These pending motions – regarding whether venue  
19 is proper over three Dish entities incorporated in Colorado – formed the basis for the  
20 stipulation between Entropic and Dish California that deferred Entropic’s response to  
21 the Counterclaims under the schedule entered by the Court in D.I. 242. The requested  
22 extension in this *ex parte* motion simply puts the MaxLinear and Entropic challenges  
23 to the Counterclaims on the same schedule and increases the likelihood that  
24 MaxLinear and Entropic’s arguments will be mooted or at least reduced in scope  
25 based on the outcome of the venue motions.

26 Counsel for Dish California met and conferred with counsel for MaxLinear  
27 prior to filing this *ex parte* application. Dish California proposed that MaxLinear  
28 agreed to the same stipulation as Entropic so that MaxLinear’s and Entropic’s

1 challenges to the Counterclaims would be on the same schedule. MaxLinear rejected  
2 this proposal. According to Local Rule 7-19, contact information for MaxLinear's  
3 counsel is provided in the certificate of service below.

4  
5 \* \* \*

6  
7 **I. THE REQUESTED EXTENSION PROMOTES JUDICIAL**  
8 **EFFICIENCY**

9 Dish California's Counterclaims against MaxLinear and Entropic overlap with  
10 respect to the substantive basis for the claims. This overlap arises from the history of  
11 these parties. In 2015, MaxLinear acquired a previous Entropic entity, which had  
12 owned the patents in suit, and in 2021 transferred the patents to newly-formed  
13 Plaintiff Entropic. The new Entropic then filed this lawsuit against Dish California  
14 and the DISH Colorado Defendants. Entropic bases its infringement allegation on the  
15 theory that practicing the MoCA standard requires infringement of the patents in suit,  
16 and thus triggers FRAND obligations arising under MoCA's Intellectual Property  
17 Rights policy ("IPR Policy") and relevant caselaw. MaxLinear and Entropic (through  
18 its predecessors in interest) have been members of MoCA and bound to MoCA's IPR  
19 policy.

20 Dish California has asserted common counterclaims against both MaxLinear  
21 and Entropic: Counterclaims III, IV, VI, and VI. More specifically, Counterclaim III  
22 seeks declaratory relief that the assignment from MaxLinear to Entropic is void based  
23 on the failure to include provisions required by the MoCA IPR policy in the  
24 assignment agreement. Counterclaim IV alleges that both MaxLinear and Entropic  
25 were bound to offer FRAND license terms under the MoCA IPR policy and have  
26 breached that obligation. Counterclaim V alleges that MaxLinear and Entropic  
27 (through its predecessors in interest) engaged in fraud and negligent misrepresentation  
28

1 regarding their promises to MoCA. And counterclaim VI alleges civil conspiracy  
2 between MaxLinear and Entropic arising from these activities.

3 Not surprisingly, the common basis for these allegations as to both MaxLinear  
4 and Entropic has resulted in both counterclaim defendants seeking to dismiss the  
5 counterclaims on similar theories. The main thrust of MaxLinear's motion is that  
6 Dish California lacks standing to bring the counterclaims, an argument that Entropic  
7 has also raised in previous meet and confer sessions. More specifically, MaxLinear  
8 contends that Dish California is not entitled to a license under the IPR Policy because  
9 it is only an "affiliate" and therefore cannot enforce the terms—even though at least  
10 one DISH entity is a former member of MoCA and would (even according to  
11 MaxLinear) have standing. MaxLinear contends the standing issue permeates each  
12 of Dish California's four counterclaims against MaxLinear. Dish California disagrees  
13 with MaxLinear and is prepared to show through relevant FRAND, contract, and  
14 antitrust caselaw that Dish California can bring these counterclaims. Yet, as Dish  
15 California has previously explained to MaxLinear and Entropic, this standing issue  
16 may become moot if the DISH Colorado Defendants' venue motion is denied. (*See*  
17 *Richards Dec. Ex. A.*) For example, if the motion is denied, the DISH Colorado  
18 Defendants expect to file similar counterclaims and Dish California may amend its  
19 counterclaims, alleging each is a proper party to the counterclaims based on its  
20 relationship to the DISH entity that was a member of MoCA and based on operation  
21 of the IPR Policy as to MaxLinear and Entropic.

22 Entropic acknowledged that the outcome of the venue motion would  
23 significantly impact the procedural and substantive posture of the counterclaims, and  
24 likely result in at least some amendment of the counterclaims. For this reason,  
25 Entropic agreed to a stipulation under which Entropic's deadline to respond to the  
26 counterclaims as well as Dish's deadline for any amendments to the counterclaims  
27 would be triggered by the decision on the venue motions. (D.I. 242.)  
28

1 In addition, regardless of the outcome of the venue motion, MaxLinear and  
2 Entropic raise parallel challenges to the counterclaims, further indicating the benefit  
3 of a single schedule for both counterclaim defendants. MaxLinear devotes a section  
4 of its motion to challenging the sufficiency of Dish California's civil conspiracy  
5 allegations and a section to arguing that voiding the assignment from MaxLinear to  
6 Entropic is not a valid form of relief as sought by Dish California's counterclaim III.  
7 Prior to stipulating to the new schedule, Entropic also indicated that it would  
8 challenge the counterclaims on these bases. (*See* Richards Dec. ¶ 8.)

9 Dish California therefore requests that the Court enter the following schedule  
10 as to MaxLinear (which is identical to the schedule with respect to Entropic recently  
11 granted by the Court in D.I. 242.):

- 12 • MaxLinear's recently filed Motion to Dismiss (D.I. 236) is taken off-  
13 calendar, without prejudice to MaxLinear filing a new Motion to Dismiss  
14 according to the schedule below.
- 15 • If the Court denies the DISH Colorado Defendants' venue motion, the  
16 DISH Colorado Defendants shall file an Answer and/or Counterclaims  
17 against MaxLinear within 21 days of the order denying the DISH  
18 Colorado Defendants' venue motion. Any amendment by Dish  
19 California to its Counterclaims against MaxLinear shall be filed no later  
20 than the date on which the DISH Colorado Defendants file an Answer  
21 and/or Counterclaims against MaxLinear.
- 22 • MaxLinear's deadline to respond to Dish California's Counterclaims, or  
23 any amendments thereto, against MaxLinear shall be 21 days after either:  
24 (i) an order from this Court granting the DISH Colorado Defendants'  
25 venue motion; or (ii) the DISH Colorado Defendants file an Answer  
26 and/or Counterclaims against MaxLinear, whichever is later.

27 This schedule will also likely result in other aspects of MaxLinear's motion  
28 becoming moot. For example, MaxLinear alleges that Dish California failed to attach

1 what it contends is the correct version of a contract under dispute; and further alleges  
2 that Dish California's counterclaims should be dismissed because Dish California  
3 failed to attach another contract MaxLinear contends is relevant. (*See* D.I. 233 at 15-  
4 16.) While Dish California disagrees that its pleading is deficient, these concerns can  
5 be mooted through a straightforward and simple amendment attaching those  
6 documents. In addition, the extension would promote judicial efficiency by aligning  
7 MaxLinear's response to Dish California's counterclaims with MaxLinear's response  
8 to any counterclaims that the separate DISH Colorado Defendants may file against  
9 MaxLinear. With the alignment, MaxLinear need only file one (not two) responses  
10 to the counterclaims, and the Court need only address one (not two) potential motions  
11 to dismiss filed by MaxLinear. Further still, only one hearing (not two) will be  
12 noticed. Schedule alignment of MaxLinear's response to the counterclaims with  
13 Entropic's schedule, moreover, will benefit the Court by having fulsome briefing from  
14 all parties, including Entropic, on the overlapping issues. Even if the venue motion  
15 is granted as to all DISH Colorado Defendants, it will be more efficient for the Court  
16 to resolve Dish California's counterclaims against both MaxLinear and Entropic at  
17 the same time.

18 **II. THE RELIEF SOUGHT IN THIS *EX PARTE* APPLICATION CANNOT**  
19 **BE SOUGHT ACCORDING TO A REGULAR BRIEFING SCHEDULE**

20 If sought by motion on a regular briefing schedule, the hearing date on this *ex*  
21 *parte* application would occur *after* the hearing date on MaxLinear's Motion to  
22 Dismiss. Moreover, without this schedule, Dish California would have to litigate its  
23 counterclaims in piecemeal fashion against Entropic and MaxLinear, and the issues  
24 presented by MaxLinear's motion would have to be addressed before the Court  
25 decides the venue motion and determines whether the DISH Colorado Defendants are  
26 part of this action. As Dish California would suffer prejudice that cannot be remedied  
27 through a normally-scheduled motion, Dish California seeks the relief through *ex*  
28 *parte* application.



**III. DISH CALIFORNIA HAS BEEN DILIGENT IN SEEKING TO ADDRESS THE ISSUES RAISED IN THIS *EX PARTE* APPLICATION WITHOUT COURT INTERVENTION.**

Dish California's position has been consistent: any motions concerning its counterclaims should be heard after this Court decides the pending venue motion. Dish California has been diligent in pursuing this position without Court intervention.

Prior to the December 22 deadline, Dish California attempted to extend the response date for each of Entropic and MaxLinear, but only Entropic agreed. (*See* D.I. 242.) Dish California diligently attempted to reach agreement with MaxLinear on a schedule that would align with Entropic. Dish California made this proposal to MaxLinear on December 19, 2023, explaining that some of the issues raised by MaxLinear (and included in its pending Motion to Dismiss) may be resolved if the venue motion is denied and the DISH Colorado Defendants become part of the case. (*See* Richards Dec. at ¶ 2; *see also* Richards Dec. Ex. A.) Dish California followed with a letter that again raised extending the time for MaxLinear's response and again explained that a decision on the venue motion may simplify issues that would be raised in MaxLinear's Motion to Dismiss. (*See* Richards Dec. ¶ 4; Richards Dec. Ex. C.) MaxLinear filed its motion anyway. (Richards Dec. ¶ 3, Richards Dec. Ex. B.)

Finally, prior to filing this *ex parte* application, counsel for Dish California emailed counsel for MaxLinear explaining the substance of the present request. (*See* Richards Dec. ¶ 5, Richards Dec. Ex. D.) In addition to the efficiencies gained from delaying any response to the Counterclaims until after a decision on the venue motion, counsel for Dish California highlighted the efficiencies that may be gained from aligning the responses from MaxLinear and from Entropic. (*See id.*) The parties then met and conferred on Thursday, December 27, but were unable to reach an agreement to extend the schedule. (*See* Richards Dec. ¶ 6.) Out of courtesy given the holidays, Dish California worked with counsel for MaxLinear regarding when to present this



1 *ex parte* application, so as to allow counsel for MaxLinear time to provide a response  
2 after the holiday weekend. (*See id.*)

3 **IV. DISH CALIFORNIA IS WITHOUT FAULT IN SEEKING RELIEF.**

4 MaxLinear's allegations (in its Motion to Dismiss) that Dish California has  
5 engaged in "dilatory litigation conduct" (D.I. 233 at 27) lacks merit. Rather than  
6 delay, Dish California has been seeking an orderly and efficient way to address and  
7 resolve MaxLinear's grievances with Dish California's counterclaims—an effort  
8 previously joined by MaxLinear through a prior agreed upon extension. (*See* D.I.  
9 176.) Entropic's stipulation to the same schedule Dish California proposes for  
10 MaxLinear is confirmation of the reasonableness of how Dish California has sought  
11 to promote efficient resolution of the issues.

12  
13 \* \* \*

14  
15 **Good cause having been shown,** Dish California respectfully requests that this  
16 Court grant the relief requested and extend the schedule for Dish California to amend  
17 and/or respond to the motion to dismiss filed by MaxLinear as set forth above.

18  
19 Dated: January 3, 2024

FISH & RICHARDSON P.C.

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21 By: /s/ Oliver J. Richards  
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